

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2011 APR 13 PM 12 32

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

UNITED STATES OF AMERICA,)

Cause No. CR 06-073-BLG-RFC

Plaintiff/Respondent,)

CV 09-149-BLG-RFC

vs.)

ORDER DENYING MOTIONS

MICHAEL W. RYAN,)

Defendant/Movant.)

On November 5, 2009, Defendant/Movant Michael Ryan, a federal prisoner proceeding with counsel, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Mot. § 2255 (*doc. 281*). The motion and a certificate of appealability ("COA") were denied on February 4, 2010. Order (*doc. 286*).

Still represented by counsel, Ryan moved the Court of Appeals to issue a COA. The motion was denied. *United States v. Ryan*, No. 10-35133 (Aug. 31, 2010) (*doc. 291*).

Acting pro se, Ryan filed a petition for writ of certiorari in the United States Supreme Court. It was denied on January 18, 2011. Clerk's Letter (*doc. 293*) at 1.

On February 17, 2011, Ryan, acting pro se, filed a motion under Fed. R. Civ. P. 60(b)(4) seeking relief from the order denying his § 2255 motion in this Court. He

alleges that the order is void because issuing it without a hearing was so unfair that it violated the most fundamental principles of due process of law. He also moves for recusal and reassignment of the Rule 60 motion to a different judge.

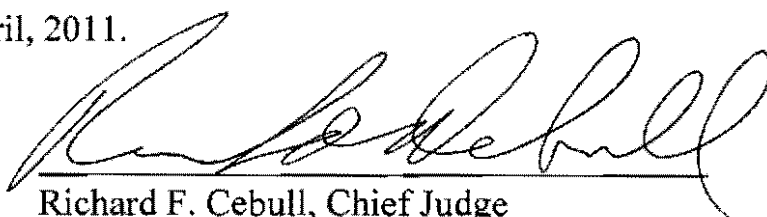
Ryan's counsel briefed both issues in his motion for a COA in the Ninth Circuit Court of Appeals. *E.g.*, Mot. for COA at 3, 4, 13, 16-20, *Ryan*, No. 10-35133 (May 5, 2010). If the issues had merit, the Court of Appeals would have granted a COA. This Court cannot "reconsider[] an issue that has already been decided by . . . a higher court in the identical case." *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997).

A COA is denied because the Ninth Circuit Court of Appeals has already denied one on these same issues.

Accordingly, IT IS HEREBY ORDERED:

1. Ryan's motions to recuse (*doc.* 295) and to void the judgment under Fed. R. Civ. P. 60(b) (*doc.* 294) are DENIED.
2. A certificate of appealability is DENIED.

DATED this 13th day of April, 2011.


Richard F. Cebull, Chief Judge
United States District Court